
BOARD NOTICES

BOARD NOTICE 122 OF 2009

FINANCIAL SERVICES BOARD

FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002 (ACT NO. 37 OF 2002)

DETERMINATION OF COMPLIANCE REPORT FOR FINANCIAL SERVICES PROVIDERS CHANGING COMPLIANCE OFFICERS, 2009

In terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act"), I, Dube Phineas Tshidi, Registrar of Financial Services Providers, by this notice with its schedule, determine the manner in which the compliance report of financial services providers that changed compliance officers during the reporting period, must be submitted, and the matters which it must have regard to. This determination was made after consultation with the Advisory Committee on Financial Services Providers.

- (a) A written report for the reporting period, conforming to the schedule attached hereto, or in the prescribed electronic format determined by the Registrar, must be submitted by the resigning compliance officer within one month after date of resignation.
- (b) Should the resigning compliance officer not be able to submit a compliance report (in case of death or immediate dismissal), a letter from the FSP stating the circumstances, will suffice.
- (c) Should the FSP appoint a compliance officer from compliance practice the resigning compliance officer is from, the resigning officer does not need to submit a compliance report.
- (d) Should there be more than one compliance officer appointed by the FSP, the resigning compliance officer does not need to submit a compliance report.
- (e) Answers should not be provided in columns that are shaded in grey in the schedule.
- (f) In this Notice and the schedule, unless the context indicates otherwise –
 - (i) any word or expression shall have the meaning that it was assigned in the Act (including any measure contemplated in the definitions of "this Act" as defined in section 1(1) of the Act);
 - (ii) "Code of Conduct" means any Code published under section 15 of the Act;
 - (iii) "Determination of Fit and Proper Requirements" means the Determination of Fit and Proper Requirements for Financial

Services Providers, 2008;

- (iv) "FICA" means the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
- (v) "Forex Investment Business Code of Conduct" means the Code of Conduct for Authorised Financial Service Providers, and their Representatives, involved in Forex Investment Business, 2004;
- (vi) "FSP" and "financial services provider" means an authorised financial services provider, and includes, where applicable, any representative of the provider;
- (vii) "General Code of Conduct" or "General Code" means the Code of Conduct for Authorised Financial Services Providers and their Representatives, 2003;
- (viii) "previous reporting period" means the reporting period of the last annual compliance report submitted;
- (ix) "Regulations" means the Financial Advisory and Intermediary Services Regulations, 2003;
- (x) "reporting date" means date on which compliance officer resigns;
- (xi) "reporting period" means the period from-
 - (aa) the date of authorisation as financial services provider in terms of section 8 of the Act; or
 - (bb) the first day of the month following the previous reporting period,;

whichever is the later date, until the reporting date. If this period is 2 months or shorter, no compliance report needs to be submitted.

This Determination is called the Determination of Compliance Report for Financial Services Providers changing Compliance Officers, 2009, and comes into operation on the date of publication thereof.

D P TSHIDI

D P TSHIDI,
Registrar of Financial Services Providers

SCHEDULE

Compliance Report in terms of section 17(4) of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("the Act") by compliance officers of financial services providers changing compliance officers

Scope

In accordance with section 17(4) of the Act, I/we (the approved compliance officer(s) of the financial services provider ("the FSP") hereby report as follows as regards compliance with the Act by (full name of the FSP and the FSP Number) and any representatives of the FSP, for the reporting period (date reporting period started) to (date of resignation of compliance officer)

Question		Column				
		1	2	3	4	5
		Yes	No	Not Applicable	Not Applicable	Not Applicable
SECTION 1 - GENERAL						
1. Conditions and restrictions imposed, made, given or issued by Registrar in terms of section 17(4) of the Act						
1.1	Does the FSP verify in all instances that any other FSP that it gives an instruction to, or receives an instruction from, is authorised to render the specific financial services without any restrictions in its licence in relation to the specific financial product?					
1.2	Financial Products in respect of which FSP renders financial services Condition is imposed by the Registrar in terms of section 17(4) of the Act					
1.2.1.	Does the FSP render financial service on any financial product that is not specifically defined in the Act or regulated in terms of any other legislation?					
1.2.2.	If the answer to Question 1.2.1 is YES – Provide details of the financial products concerned in a separate annexure and indicate the annexure number in column 5.					

Question	Column				
	1	2	3	4	5
	Yes	No	Not applicable	Details to be included in the report	Note No. Column/Annexure
1.3 Financial Products in respect of which FSP renders financial services <i>Authorisation in terms of the licence of the FSP</i>					
1.3.1. Did any non-compliance occur in respect of the limitation on categories and sub-categories for which the licence is issued during the reporting period?					
1.3.2. If the answer to Question 1.3.1 is YES - Provide details of non-compliance in a separate annexure and indicate the annexure number in column 5.					
2. Key Individuals <i>Section 8(1) and 8(4)(b) of Act and Determination of Fit and Proper Requirements for Financial Services Providers</i>					
2.1 Are all people involved in the managing/overseeing function in relation to the rendering of financial services, appointed as key individuals?					
2.2 Fit and Proper Requirements for key individuals <i>Determination of Fit and Proper Requirements for Financial Services Providers</i>					
2.2.1. Did any changes occur in the personal circumstances of any key individual during the reporting period that adversely affected the Fit and Proper Requirements of the person?					
2.2.2. If the answer to Question 2.2.1 is YES - Provide full details thereof in a separate annexure and indicate the annexure number in column 5.					
3. Representatives <i>Section 10 and 11 of the Act</i>					
3.1 Was the representative register updated during the reporting period in terms of condition 1 of the licensing conditions?					

Question		Column				
		1	2	3	4	5
		Yes	No	Not Indicated	Develop Internal Policy	Note No. Comments Annexure
3.2. Debarment of representatives <i>Section 14 of the Act</i>						
3.2.1. Did the FSP debar any of its representatives during the reporting period without informing the Registrar accordingly?						
4. Compliance function <i>Section 17 of the Act and Chapter IV of the Regulations</i>						
4.1 Is the compliance function established as part of the risk management framework of the business of the FSP in compliance with section 17(3) of the Act and Regulation 5?						
4.2 Did you (compliance officer) provide written reports on the compliance monitoring and recommendations relating to the FSP on a regular basis in terms of regulation 5(3) of the Regulations?						
4.3 In the case where you (compliance officer) are not in the full time employ of the FSP, indicate in column 5 the number of visits to the FSP in order to perform monitoring procedures during the reporting period.						
4.4 Do you (compliance officer) have any issues that are not covered by this report that you would want to bring to the attention of the Registrar? Attach a written copy of your comments as an annexure and indicate the annexure number in column 5.						
4.5 In a separate annexure, provide reasons for resigning as Compliance Officer of the FSP. Indicate the annexure number in column 5.						
4.6 In a separate annexure, attach a copy of the latest report that you (compliance officer) provided to the FSP. Indicate the annexure number in column 5.						
5. General Code of Conduct						
5.1 General provisions <i>Section 3 of the General Code of Conduct</i>						
5.1.1. If applicable, did the FSP disclose to its clients any non-cash incentives and other indirect considerations received in terms of the internal policy/ies?						

Question	Column				
	1	2	3	4	5
	Yes	No	Not applicable	Development area	Note No. Comments/Annexure
5.2. Furnishing of advice and record of advice <i>Sections 8 and 9 of the General Code of Conduct</i>					
5.2.1. Is the FSP licensed to furnish advice?					
5.2.2. Did the FSP render advice as a regular feature of its business during the reporting period?					
5.2.3. <i>If the answer to Question 5.2.2 is YES -</i>					
5.2.3.1 Did the FSP comply in all instances with section 8(1)(d) of the General Code of Conduct relating to replacement products during the reporting period ?					
5.3. Custody of financial products and funds <i>Section 10 of the General Code of Conduct</i>					
5.3.1. Has the FSP changed auditors during the reporting period?					
5.3.1.1 <i>If the answer to Question 5.3.1 is YES -</i> Did the FSP inform the Registrar of the change of auditors?					
5.4. Risk management <i>Sections 11 and 12 of the General Code of Conduct</i>					
5.4.1. Does the FSP have and employ appropriate risk management resources, procedures, systems and controls as described in sections 11 and 12 of the General Code of Conduct?					
5.4.2. Does the FSP have a documented Risk Management Plan?					
5.5. Advertising <i>Section 14 of the General Code of Conduct</i>					
5.5.1. Does the FSP advertise its financial services?					

Question	Column				
	1	2	3	4	5
	Yes	No	Not applicable	Developmental areas	Note No. Comment/Annexure
5.5.2. If the answer to Question 5.5.1 is YES-					
5.5.2.1 Is a reference to the fact that a licence is held contained in all advertisements that were placed during the reporting period?					
6. Money laundering control procedures					
6.1 Is the FSP an accountable institution in terms of Schedule 1 of FICA?					
6.2 If the answer to Question 6.1 is YES – Are you (compliance officer) also appointed as the Money Laundering Control Officer of the FSP?					
7. Financial soundness					
7.1 Did the FSP comply with the solvency requirements as required in terms of paragraph 9 of the Fit and Proper Requirements for Financial Services Providers at all times during the reporting period?					
7.2 Does the FSP prepare monthly accounting records in terms of section 19 of the Act?					
8. MONITORING					
8.1 Please indicate the type of monitoring that you (compliance officer) performed during the reporting period:					
8.1.1. Financial products in respect of which the FSP renders financial service.					
8.1.2. Representatives under supervision.					
8.1.3. Disclosure documents to check compliance with sections 4 and 5 of the General Code of Conduct.					
8.1.4. Disclosure documents to check compliance with section 7 of the General Code of Conduct.					
8.1.5. Furnishing of advice and record of advice.					
8.1.6. Receipt of funds and/or collection of premiums.					

Question	Column				
	1	2	3	4	5
	Yes	No	Not applicable	Developmental area	Note No. Comment/Annexure
8.1.7. Waiver of rights.					
8.1.8. Money laundering control procedures.					
8.1.9. Exchange control regulations (in case of a forex FSP).					
8.1.10. Policies and procedures.					
8.1.11. Mandates and application forms.					
8.1.12. Other. Please provide details on other monitoring in a separate annexure and indicate the annexure number in column 5.					
8.1.13. In a separate annexure, provide an explanation as to how you did the monitoring (methodology). Please also include the extent of monitoring. Indicate the annexure number in column 5.					
8.2 Did you (compliance officer) find any instances of non-compliance with the Act and subordinate legislation during the reporting period? If YES, provide full details thereof in a separate annexure and indicate the annexure number in column 5.					
SECTION 2: ADMINISTRATIVE FSPs					
9. Record keeping Section 7 of the Code of Conduct for Administrative FSPs, 2003					
9.1 Are client records maintained to identify the specific financial product owned per client?					
9.2 Independent Nominee Section 9 of the Code of Conduct for Administrative FSPs, 2003					
9.2.1. Does the FSP ensure that the independent nominee is approved in terms of the Requirements imposed by the Financial Services Board for Nominees to operate in South Africa (Board Notice 63 of 2007)?					

Question	Column				
	1	2	3	4	5
	Yes	No	Not applicable	Develop mental area	Note No. Comment/ Annexure
9.2.2. Does the FSP have procedures in place to ensure that all bank and unit reconciliations are up to date?					
SECTION 3 – DISCRETIONARY FSPs					
10. Particular duties/obligations relating to discretionary FSPs					
10.1 Nominee companies <i>Section 8 of the General Code of Conduct for Discretionary FSPs 2003</i>					
10.1.1. Does the FSP hold client investments?					
10.1.2. If the answer to Question 10.1.1 is YES –					
10.1.2.1 Does the FSP hold client investments in its own nominee company approved by the Registrar as required in terms of regulation 6 of the Regulations?					
10.1.2.2 Does the FSP make use of another approved nominee company to hold client assets?					
SECTION 4 – FOREX FSPs <i>The forex code covers forex investments which are investments in a financial product referred to in paragraph (c) of the definition of “financial product” in section 1(1) of the Act</i>					
11. Particular duties/obligations relating to forex FSPs					
<i>If the FSP is licensed for subcategory 1, 15 Questions 11.1 and 11.2 must be answered</i>					
11.1 Is the FSP licensed to give advice as a forex service provider?					
11.2 Does the FSP ensure that clients comply with exchange control regulations (including tax legislation) when giving advice on forex investment business? If any non-compliance were found, please provide full details thereof as a separate annexure and indicate annexure number in column 5.					
<i>If the FSP is licensed for subcategory 2, 13 Question 11.3 must be answered</i>					

Question	Column				
	1	2	3	4	5
	Yes	No	Not applicable	Deviation from	Not a Comment Annexure
11.3 Special prohibitions applying to forex investment intermediaries <i>Section 5 of the Forex Investment Business Code of Conduct</i>					
11.3.1 Does the FSP render forex investment intermediary services?					
11.3.2 Did the FSP comply with Exchange Control Legislation (including Tax Laws) when dealing with forex investment business?					
11.3.3 If the answer to Question 11.3.2 is NO – Provide full details of any instances of non-compliance in a separate annexure. Indicate the annexure number in column 5.					
SECTION 5 – HEALTH SERVICES BENEFITS					
12 Accreditation under section 65(3) of the Medical Schemes Act, 1998 <i>Section 8(7)(e) of the Act</i>					
12.1 Is the FSP licensed to render financial services relating to health services benefits?					
12.2 If the answer to Question 12.1 is YES -					
12.2.1 Was the accreditation of the FSP in terms of section 65(3) of the Medical Schemes Act, 1998, during the reporting period suspended, or withdrawn, or did it lapse? Please provide details of any suspensions, withdrawals or lapses as an Annexure to the report and indicate the annexure number in column 5.					
SECTION 6 – HEDGE FUND FINANCIAL SERVICES PROVIDERS					
13. Does the FSP manage assets of a hedge fund? If the answer is YES, Questions 14 to 16 must be answered.					
14 Amendment Notice on Codes of Conduct for Administrative and Discretionary FSPs <i>Board Notice 69 of 2007 and Board Notice 57 of 2008</i>					

Question	Column				
	1	2	3	4	5
	Yes	No	Not applicable	Developmental area	Note No Comment Annexure
14.1 Did you (compliance officer) perform monitoring procedures to ensure that the hedge fund FSP complied with paragraph 8.A.1 to 8.A.4 of the said Board Notice 89 of 2007 for the reporting period?					
14.2 Did you (compliance officer) perform monitoring procedures to ensure that the risk disclosure document as stipulated in paragraph 8.4.2(b) of BN 89 of 2007 and BN 571 of 2008 has been included in the mandate?					
15. Risk Management Part IX of the General Code of Conduct					
15.1 Does the Hedge Fund FSP have a risk management plan in place in accordance with Part IX of the General Code of Conduct describing the risk management process in respect of the hedge fund management business?					
15.2 Did the FSP disclose the risks as published in Board Notice 571 of 2008 in respect of hedge funds to its investors in the hedge fund portfolios at all times during the reporting period?					
16. General					
16.1 Did the FSP provide valuations for any instruments to the fund administrator which, to the best of the FSPs knowledge, are relied upon by the administrator in valuating the fund?					
16.2 Have any changes occurred in the operational ability of the FSP since approval as hedge fund FSP?					
16.3 If the answer to Question 16.2 is YES – In a separate annexure, attach an updated Form 15B, clearly indicating the changes in operational ability.					
16.4 Did the Registrar approve all specimen mandate/s of the hedge fund portfolios?					

[illegible]

To be completed and signed by the compliance officer

Name of compliance officer of FSP _____

ID number of the compliance officer _____

Name of the compliance practice (if applicable) _____

Reference number of compliance officer/practice _____

Signature of the compliance officer _____

Date _____

Address _____

Telephone number _____

Fax number _____

E-mail address _____

To be completed and signed by one of the key individuals of the FSP to acknowledge that they are aware that the report will be forwarded to the Registrar

Name of the FSP _____

FSP Number _____

Name of key individual _____

ID number of the key individual _____

Date appointed as key individual _____

Signature _____

Date _____

Please note that reports that have not been signed by BOTH the compliance officer and one of the key individuals, will be regarded as "Not Submitted".

DECLARATION TO BE SIGNED BY COMPLIANCE OFFICER

Compliance report in terms of section 17(4) of the Financial Advisory and Intermediary Act, 2002 (Act No. 37 of 2002) ("the Act") by compliance officers for the period between _____ (insert date) and _____ (insert date).

In accordance with section 17(4) of the Act, I/we _____ (being the approved compliance officer(s) of the financial services provider ("the FSP") hereby report as follows as regards compliance by _____ (insert full names of FSP and FSP number) and any representatives and/or Key Individuals of the FSP with the Act, for the period _____ (insert period).

Having completed the attached hand-over compliance report for the abovementioned FSP, I/we hereby confirm without any reservations that, to the best of my/our knowledge and ability all the information contained in the attached annual compliance report is both true and correct in all respects/aspects.

I/we are aware that the information contained in the attached hand-over compliance report may be subject to verification by the Registrar of Financial Services Providers (the Registrar) at any time, and should such information be found to be false, incorrect, misleading or in any manner not to be to the satisfaction of the Registrar, this may impact on my/our compliance with the Fit and Proper Requirements with regard to personal character qualities of honesty and integrity as determined by section 8(1) of the Act.

Signed on this the _____ day of _____ (month) _____ (year).

Name of compliance officer: _____

Signature: _____